

# **SPECIAL MEETING NORTH SMITHFIELD TOWN COUNCIL**

**MAY 2, 2011**

**KENDALL-DEAN SCHOOL AUDITORIUM**

**7:00 P.M.**

The meeting began at 7:00 P.M. with the prayer and the pledge to the flag. Council members present were Ms. Alves, Mrs. Charest, Mr. McGee, Mr. Zwolenski and Mr. Yazbak. Town Administrator Hamilton and Town Solicitor Nadeau were also in attendance.

## **PRESENTATION OF CITATION TO JAMES O'BRIEN**

The Town Council presented a citation to Mr. James O'Brien who has decided to retire after serving the town in a volunteer capacity for 27 years, most recently as Deputy Director of the Emergency Management Agency.

## **PUBLIC HEARING RE: ZONING ORDINANCE AMENDMENT FOR STONE WALL PROTECTION AND PRESERVATION**

Town Planner Robert Ericson stated the proposed ordinance has been reviewed by the Planning Board and found to be consistent with the Comprehensive Plan.

Mr. Paul Soares of the Ordinance Development Commission gave a brief history of how this ordinance came to be developed. A year ago a meeting was held with the Blackstone River Valley National Heritage Corridor and various board members to determine the most historic landscapes in the town. It was decided there were five areas that

**should be preserved: Slatersville, Nipsachuck, Wright's Dairy Farm, Primrose Pond and stone walls and scenic roads.**

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**The intent is to protect historic stone walls built prior to 1900. Mr. Soares noted there are methods to establish the age of a wall. Included in the ordinance is a statement that, "It is not the intent of this ordinance to deprive a citizen use to their property, detract from that property's value or cause financial hardship." The commission felt this would alleviate concerns about property rights. Mr. Soares also noted there are provisions for an override.**

**Mr. Paul Laprade of 170 Providence Pike felt this ordinance is another attempt to block new development in town and to take away property rights. Some developments have been stalled for lengthy amounts of time resulting in the loss of tax revenue. The town needs to encourage development and not tie the hands of developers with ordinances like this.**

**Mr. Steven Biron of 2000 Providence Pike believes that voters are tired of increased government size. He agrees this ordinance would be a hindrance to development and urged rejection of it.**

**Mrs. Claire O'Hara of 16 Summit Avenue disagreed. She feels the town needs selective development and the ordinance provides**

**enough leeway to dismantle or reconstruct a wall.**

**Mrs. Linda Thibault of 83 St. Paul Street also supports the ordinance feeling that stone walls are very much a part of the town's history. Preserving a stone wall will not detract from development. Several years ago a town survey had been taken and residents who responded were very interested in preserving the history of the town.**

**Mr. Peter Godon of 170 Log Road stated if a stone wall is on someone's property, it is his decision what he wants to do with it.**

**Mr. Zwolenski has seen some of the changes that have been made to this ordinance and, although there are some items removed that he would have liked to remain, the Planning Board has stated that it is consistent with the Comprehensive Plan. He added that subsection (d) under General Provisions enables a person to develop his property.**

**Mr. McGee loves history but he would rather not have an ordinance like this. A person should be able to do what he wants with his property and this type of ordinance does hold back development.**

**Mr. Nadeau, being unsure if he had a conflict with the ordinance because there is a stone wall on his property, contacted Assistant Town Solicitor William Savastano for his opinion. Mr. Savastano advised that the Town Council should not adopt the ordinance in its**

present form because the guidelines set forth in Robert M. Thorson's book, *Exploring Stone Walls*, (as mentioned in the ordinance) do not give the public adequate notice as to the classification of historic stone walls. In addition he questioned having to use the same materials and the same construction to replace a historic wall.

Mr. Soares denied that the Laurelwood and Dowling Village developments were delayed because of stone walls. Nor does he agree with the reference made to the book. This ordinance looks to put reasonable restrictions on developers to protect the culture and heritage.

Mr. Biron questioned why the ordinance would be necessary to begin with if it provides for exemptions.

Mr. George Hemond of 18 Eaton Street asked if all the walls built prior to 1900 had been identified. He wondered how enforceable the ordinance would be.

Mr. Ericson responded that there are aerial photos of the town back to the 1930s.

Mr. Ericson stated the Planning Board already has the authority to review and identify historic stone walls on property. When asked a question by Mr. Yazbak, Mr. Ericson answered that the Planning Board is considering stone walls in subdivisions and they will be

**considered whether this ordinance passes or not.**

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**MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to close the public hearing.**

**Mr. Zwolenski suggested striking the reference to Mr. Thorson's book.**

**MOTION by Mr. Zwolenski to table the first reading to July 18, 2011. There was no second.**

**MOTION by Mrs. Charest and seconded by Mr. McGee and Ms. Alves that, in light of Mr. Ericson's last comments, the ordinance be denied altogether.**

**Roll call: Ms. Alves – yes; Mrs. Charest – yes; Mr. McGee – yes; Mr. Zwolenski – no; and Mr. Yazbak – yes. The motion carried 4 to 1.**

#### **PUBLIC HEARING RE: USE OF RECREATIONAL VEHICLES**

**Mr. Yazbak read the following proposed amendments to the ordinance: Section 15-13(b) 1) Restrictions: a.) The use of said vehicles shall be prohibited between the hours of 8:00 p.m. to 10:00 a.m. b.) The use of said vehicles shall be prohibited within 300 feet of any abutting residential dwelling. 2.) Exceptions: The prohibitions**

defined above shall not be construed or enforced so as to prohibit the use of said vehicles for the following purposes: a.) For use on property of a commercial farming and/or agricultural operation. b.) the operation of said vehicles for the purpose of loading and offloading the same from the location where it is regularly stored onto a trailer, vehicle or other legal means of transport to and from said location. c.) The operation of said vehicles by law enforcement and medical emergency personnel. d.) The operation of said vehicles for utilitarian purposes, e.g., snow plowing, yard clean-up, wood hauling.

Mr. Paul Soares of the Ordinance Development Commission explained these amendments were taken directly from an ordinance of Methuen, Massachusetts. The purpose is to prevent excessive noise and disturbance of the peace.

Mr. Soares referred to a section in the noise ordinance that refers to creating a noise disturbance across a real boundary that the Ordinance Review Committee found very vague and unenforceable. This new ordinance spells it out.

Mr. Steven Biron of 2000 Providence Pike questioned whether the police department had any input into this ordinance.

Mr. Soares answered that this question came up at one of the meetings of the Ordinance Development Committee and the majority of the members did not feel the need to ask the police department for

input.

As an all-terrain vehicle owner, Mr. Peter Godon of 170 Log Road stated the ATVs of today are not the same as years ago. They are equipped with better mufflers and are extremely quiet.

Mr. Walter Pierowski felt this was an elitist, silly law that makes no sense and limits residents' rights. He felt the police department should have been consulted. Mr. Pierowski noted that motorcycles pass within 300 feet of his property and he wondered where the line would be drawn.

Mr. Zwolenski commented that ATVs have various utilitarian purposes and perhaps the police department should have been consulted. At one time there had been problems with out-of-town ATV riders who would be trespassing on private property.

Mr. McGee strongly disagreed with the ordinance.

Mr. Soares reiterated that this ordinance was drafted to protect the peace and quiet of neighborhoods and a person's right to live in peace and quiet and not be disturbed by noisy neighbors. It has nothing to do with using a vehicle on your own property.

**MOTION** by Mrs. Charest, seconded by Ms. Alves, and voted unanimously on an aye vote to close the public hearing

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**MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on an aye vote to continue discussion on this ordinance to July 18, 2011 to enable the Town Administrator to post it on the town's website.**

**TRANSFER OF CLASS BV LIQUOR LICENSE – THE PINES RESTAURANT, LLC**

**Mr. Nadeau noted that all unpaid invoices have been released and the Town Clerk had received an email from the Division of Taxation that the Certificate of Good Standing had been mailed out last Friday. He recommended approval but not issuance until the certificate is received.**

**MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on a roll call vote to approve the transfer of the Class BV liquor license from The Pines, Inc. to The Pines Restaurant, LLC but to withhold issuance until the Certificate of Good Standing is received based upon the recommendation of the Town Solicitor.**

**VICTUALING LICENSE – THE PINES RESTAURANT, LLC**

**MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on a roll call vote to approve a victualing license for The Pines Restaurant, LLC.**



## **11 GILFILLAN ROAD PROPERTY**

**A list of questions regarding the transfer of the property had been provided at the last meeting by concerned neighbors. At issue was the possibility of the existing residence being used as some type of group home.**

**Mrs. Hamilton had contacted the state about these questions and did obtain some information. She noted that the Town of North Smithfield has no jurisdiction over siting of group homes.**

**1. What is the intended use of this property?**

**A: Per state: Disabled, elderly persons**

**2. How did the new owners designate the property use for their state license for this facility?**

**A: Licensed by and per state.**

**3. Is the intended use for this property permissible given the zoning district for this property?**

**A: Yes, residential.**

**4. How many residents will reside at this property?**

**A: Approx. 3, we have been told.**

**5. What type of residents will be located at this property?**

**A: Disabled, elderly**

**6. How will the interior of the structure be retrofitted for the specific needs of the residents?**

**A: Per their needs**

**7. How will the exterior of the structure be retrofitted for the specific needs of the residents?**

**A: Per their needs**

**8. What is the process for the issuance of building permits for property alterations in our town?**

**A: Have to submit plans to building and zoning official as per Town laws**

**9. Who is the deciding authority with regard to the issuance of building permits?**

**A: Building official**

**10. How many vehicles will be on site each day?**

**A: Staff use only**

**11. How many staff members will be scheduled for services at this property each day?**

**A: We were told 3 shifts**

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**12. What is the parking ordinance for our neighborhood for off street parking?**

**A: Same as for everyone, allowed**

**13. Where will each staff member's vehicle be parked while at the facility?**

**A: Where necessary**

**14. If there is a van(s) assigned to this facility, where will the van(s) be parked each day?**

**A: Not sure of this. Have not spoken to applicant yet**

**15. Will there be a dumpster onsite? If so, where will it be located?**

**A: Still no determination of such**

**16. Will the residents be attending our town schools?**

**A: Highly unlikely**

**17. What are the requirements for the owners to maintain the property**

**within our neighborhood standards?**

**A: Standards apply to all residences**

**18. Are there any plans for beautification of the property?**

**A: As with every residence, each has different plans**

**19. What is the required level of low income housing for our town?**

**A: This is not low income. We are required to have 10% low income housing per state law.**

**20. How many low income house units exist in our town?**

**A: We are close to reaching our required 10%**

**21. Has the Town met the required level for low income housing?**

**A: Very close. Marshfield Common will help us meet the requirement**

**22. How many group facilities exist in our town?**

**A: Approximately 10 state licensed**

**23. How many group facilities exist in the surrounding communities?**

**A: Have not researched. Not sure.**

**24. What is our percentage of group homes to population in our town compared to surrounding communities?**

**A: Will need to contact each community. Not sure at this time.**

**25. What action will be taken by our town officials to prohibit more properties within the town to be off the tax rolls?**

**A: We have no authority to regulate licensing of group homes, per state law.**

**Ms. Paula Farrell, spokesperson for the neighborhood residents, asked for further information on what would be the tax implication to the town by having additional tax exempt group homes placed in the town and also if there is anything the town can do to stop these purchases. She felt it would behoove North Smithfield to work with state officials to advocate for the town because we seem to have more than our fair share of these residences.**

**Mr. Jason Tanner of 21 O'Donnell Avenue met with the Vice President of Seven Hills, the new owner of the property. Mr. Tanner was told that although initially the plan is for the residents to be three elderly women, they cannot guarantee that it will stay that way.**

**Mr. Yazbak asked if Ms. Hamilton could set up a meeting with the state regulators to ask them to explain how the application is processed and whether or not it can be changed or can that information be requested in writing. He suggested that if a meeting can be arranged, the town's local General Assembly representatives be invited along with one or two neighbors from the Gilfillan Road area and perhaps a Council member.**

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**Mr. Zwolenski asked if Ms. Hamilton could send a letter tomorrow to the state licensing board conveying that the town has concerns**

**because there are unanswered questions.**

**Ms. Farrell stated that her group did request information in writing from the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals under the Access to Open Records Act and they were told that the department would take the full 30 days to respond to the questions.**

**Mr. Nadeau suggested that the group contact Attorney Michael Field in the Attorney General's Office and he offered to assist them.**

**Mr. Nadeau added that he is a resident of the neighborhood and is very familiar with the circumstances. He will try to obtain a copy of the license application which he believes is a public document.**

**An update was scheduled for the May 16th meeting.**

## **RACE TO THE TOP INITIATIVE**

**MOTION by Mrs. Charest, seconded by Ms. Alves, and voted unanimously on an aye vote to move this item up on the agenda.**

**Mrs. Claire Arnold, Director of Curriculum/Professional Development, explained that the Rhode Island Department of Education (RIDE) had applied for this grant and has been awarded \$75 million. With this grant, RIDE is creating systems of support for educational initiatives based on improving student achievements.**

**Mrs. Arnold, Technology Director Eric Butash and Superintendent of Schools Stephen Lindberg gave presentations on four areas – Standards and Curriculum, Instructional Improvements, Educator Effectiveness and Human Capital Development.**

**Mr. Lindberg noted there will be a large emphasis placed on teacher evaluations. Every teacher will have to go through six observations and a full evaluation. They will complete a written self-assessment reflection. They will do a written professional growth plan to come up with growth plan goals developed and approved in conjunction with the building administrator.**

**Mr. Lindberg commented this is a total focus on student achievement, data and teacher growth.**

#### **OUTDOOR SOUND SYSTEM PERMIT – L. BOTTACHIARI**

**MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to move this item up on the agenda.**

**MOTION by Mrs. Charest, seconded by Ms. Alves, and voted unanimously on an aye vote to approve an outdoor sound system permit for Ms. Lynda Bottachiari at 375 Great Road on May 21, 2011 from 4:00 p.m. to 11:00 p.m.**

#### **COMMUNITY DEVELOPMENT BLOCK GRANT FOR DISASTER RELIEF**

**MOTION by Ms. Alves, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to move this item up on the agenda.**

**In a memo to the Council, Mr. Ericson wrote this is a one-time funding source related to the March 2010 flooding. It focuses on damages that have not yet been mitigated. He and the Planning Board have focused on Branch Village because designated redevelopment areas score points and it is where most of the flooding threat remains. He is completing forms for the following: \$58,000 for a Cherry Brook hydrological study and design for using the 69-acre Silva Estate land (now owned by the Town) as a detention basin for the southwest sub-watershed; \$14,000 for trash rack installations at the Cherry Brook railroad culvert near Route 146A and other locations; \$1,180,000 for a sewer line from the ATP site to the first Brickle sewer main; \$92,000 for matching funds for a forthcoming EDA-DR application; and \$670,000 for acquisition and stabilization of the ATP site for non-profit redevelopment as a green commercial/manufacturing incubator site with low and moderate income job opportunities.**

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**MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on an aye vote at 10:00 P.M. to extend the meeting to 10:30 P.M.**



## **CHARGES TO THE ORDINANCE DEVELOPMENT COMMITTEE**

**MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted unanimously on an aye vote to move this item up on the agenda.**

**Mr. Yazbak thought that when this committee was reestablished they would first amend ordinances to comply with the Comprehensive Plan and he would like them to spend the bulk of their time focusing on that.**

**MOTION by Mr. Yazbak, seconded by Ms. Alves and Mr. Zwolenski, and voted unanimously on an aye vote to charge the Ordinance Development Committee with the following items in the order of preference: zoning changes recommended in the Comprehensive Plan, compliance with the RIDEM MS 4 (Stormwater Management) requirements and wind turbines.**

## **RESOLUTION RE: CONTINUING EXEMPTION TO RIGL §44-5-2 (3050)**

**MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to move this item up on the agenda.**

**MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted unanimously on a roll call vote to adopt the following resolution as presented: “WHEREAS, the Master Plan for a large 600,000+ square foot retail development known as “Dowling Village” was approved by the Planning Board of the Town of North Smithfield (the “Town”) on July 1, 2004; and WHEREAS, it was anticipated that the Dowling**

**Village project would add an aggregate of approximately \$1,000,000 per year to the property tax revenues collected by the Town; and WHEREAS, the Town was at that time reviewing certain proposals for school construction needed by the Town, including a proposal to plan, design and construct a new middle school; and WHEREAS , financing the proposed new middle school required the Town to issue a \$30,000,000 bond; and WHEREAS, (a) in deciding whether to go forward with planning for the proposed new middle school, and (b) in deciding to ask the Town’s residents to approve the proposed new middle school and the significant additional expense to be incurred in the construction of same, the then serving Town Council determined to designate the approximately \$1,000,000 in additional aggregate property tax revenues to be derived from the Dowling Village project when it was completed as an offset to the costs of repaying the above referenced \$30,000,000 bond; and WHEREAS, in reliance upon the availability of said repayment source, the Town’s residents approved issuance of the bond in a special election on April 11, 2006; and WHEREAS, due to no fault of either the Town or the developer, the Dowling Village project was significantly delayed due to litigation brought against the Town and the Dowling Village developer, and then further delayed such that major construction was only started in 2010; and WHEREAS, the result of such delays in construction and the subsequent amendment of R.I.G.L. §44-5-2 by that act known as “Senate Bill 3050” has deprived the Town of the repayment source it anticipated when the new middle school project was planned and approved by the voters. IT IS RESOLVED by the Town Council of the**

**Town of North Smithfield as follows: That each Representative to the Rhode Island House of Representatives and each Senator in the Rhode Island Senate whose district includes all or some portion of the Town of North Smithfield be requested to take all necessary actions to introduce and attain the passage of an act authorizing and allowing the Town of North Smithfield a continuing exemption to R.I.G.L. §44-5-2, which continuing exemption would authorize the Town to exceed the annual growth cap currently allowed by R.I.G.L. §44-5-2 with regard to the Town's tax levy by an amount equal to the amount of property tax revenue received by the Town from the Dowling Village project in Fiscal Year 2011 and thereafter up to and including the Town's Fiscal Year 2031. That Town Administrator, Paulette D. Hamilton, is hereby authorized and directed to perform any and all acts necessary to facilitate action by the Rhode Island General Assembly to introduce and attain the passage of an act authorizing and allowing the Town of North Smithfield to authorize the Town to exceed the annual growth cap allowed with regard to the Town's tax levy. The Town Administrator is hereby authorized to sign all documents necessary to carry out the Resolution set forth above."**

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**CERTIFIED LOCAL GOVERNMENT GRANT AGREEMENT**

**MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to move this item up on the agenda.**

**Mr. Ericson explained this is an agreement between the Town of North Smithfield and the State of Rhode Island by and through the Rhode Island Historical Preservation and Heritage Commission. It is an agreement for the Certified Local Grant project to complete a GIS mapping study of the European settlement of northern Rhode Island during the first century of settlement, c. 1636-1730.**

**MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on an aye vote to allow the Town Administrator to sign the agreement.**

**MOTION by Mrs. Charest, seconded by Ms. Alves and Mr. McGee, and voted unanimously on an aye vote to move discussion, vote or other action on the following items to the May 9th Council meeting: Fiscal Year 2010/2011 School Department Deficit, Fiscal Year 2011/2012 School Department Funding Deficit, Municipal Annex/Police Station Fire Code Appeal, Appointment to Redevelopment Agency, Funding Source for the Kendall-Dean Sewer Connection, Intermunicipal Equipment Sharing Agreement, Former Employee Severance, and Current Unemployment Payment to Former Employees.**

## **EXECUTIVE SESSION**

**MOTION by Mrs. Charest, seconded by Ms. Alves, and voted unanimously on an aye vote to enter into executive session at 10:17 P.M. pursuant to RIGL 42-46-5(A)(2) Sessions pertaining to collective**

**bargaining or litigation, or work sessions pertaining to collective bargaining or litigation to discuss a collective bargaining agreement demand for arbitration made by RI Council 94, AFSCME.**

**MOTION by Mrs. Charest, seconded by Ms. Alves, and voted unanimously on an aye vote to come out of executive session at 10:20 P.M. and to seal the minutes. No motions were made and no votes were taken.**

#### **COLLECTIVE BARGAINING DEMAND FOR ARBITRATION**

**MOTION by Mrs. Charest, seconded by Ms. Alves, and voted unanimously on a roll call vote to approve the retention of Andrew Prescott of Nixon Peabody to handle the arbitration filed by two dispatchers belonging to the union represented by RI Council 94, AFSCME.**

**MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to adjourn at 10:21 P.M.**

**Respectfully submitted,**

**Debra A. Todd, Town Clerk**